TRANSCRIPT

SUPREME COURT OF THE

OCTOBER

No.

RUSSELL HUNTLEY AND

PLAINTIFFS IN

vs.

THE COMMONWEALTH OF

IN ERROR TO THE SUPERIOR

FILED

(15,007.)

(15,047.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 750.

RUSSELL HUNTLEY AND LUTHER H. HUNTLEY,
PLAINTIFFS IN ERROR,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 14, 1893.

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the honorable the judges of the superior court of the Commonwealth of Massachusetts, holden at Boston, within and for the county of Suffolk, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court, before you or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between The Commonwealth of Massachusetts, plaintiff, and Russell Huntley and Luther H. Huntley, defendants, in a plea of not guilty, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Russell Huntley and Luther H. Huntley, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the sixth day of June next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the nineteenth day of May, in the year of our Lord one thousand eight hundred and ninety-two.

JOHN G. STETSON,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—
ALBERT MASON,
Chief Justice of Superior Court of
Commonwealth of Massachusetts.

1½ COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

And now here the judges of the superior court of said Commonwealth make return of this writ by annexing hereto and sending herewith, under the seal of the said superior court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, John P. Manning, clerk of said superior court for the transaction of criminal business within and for said county, have hereto set my hand and seal of the said court this 24th day of May, A. D. 1892.

Seal of the Superior Court.

JOHN P. MANNING, *Clerk*.

2 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

To all persons to whom these presents shall come, Greeting:

Know ye that among the records of our superior court for the transaction of criminal business within and for the county of Suffolk, begun and holden at Boston on the first Monday of May, in the year of our Lord one thousand eight hundred and ninty-two, it is thus contained, the following being the entire record in the case of The Commonwealth of Massachusetts *versus* Russell Huntley and Luther H. Huntley.

3 The following is the complaint entered in the superior court by appeal from the municipal court of the city of Boston:

4 *Complaint.*

To the justices of the municipal court of the city of Boston, holden at said Boston for the transaction of criminal business, within the county of Suffolk:

Charles Harrington, of the city of Boston, in the county of Suffolk, in behalf of the Commonwealth of Massachusetts, on oath complains that Russell Huntley and Luther H. Huntley, of said Boston, on the eighteenth day of September, in the year of our Lord one thousand eight hundred and ninety-one, at Boston aforesaid, and within the judicial district of said court, did expose for sale a certain article, product, and compound made partly out of certain fats, oils, and oleaginous substances and compounds thereof, not produced from unadulterated milk or cream from the same, to wit, a certain article, product, and compound known as oleomarg-ine, the said article, product, and compound then and there being in imitation of yellow better, produced from pure unadulterated milk and cream of the same—

Against the peace of said Commonwealth and the form of the statute in such case made and provided.

CHARLES HARRINGTON.

SUFFOLK, *To wit:*

Taken and sworn to this twenty-second day of September, in the year of our Lord one thousand eight hundred and ninty-one.

Before said court.

WM. W. DAVIS,
Assistant Clerk.

A true copy.
Attest: FRED. C. INGALLS, *Clerk.*

5 Said complaint was entered in said superior court from the municipal court of the city of Boston, at the November term A. D. 1891, when the said Russell and Luther were set at the bar and for trial put themselves on the country, and the Commonwealth did the like by its attorney, Frederick E. Hurd, Esquire.

A jury was empanelled and sworn to try the issue, to wit, Samuel H. Mayo, foreman, and eleven of his fellows, who, after hearing and understanding all matters concerning the same, returned their verdict and on oath said that said Russell and Luther were severally guilty.

Thereupon the justice who presided at the trial aforesaid reported said case to the supreme judicial court of said Commonwealth.

The following is the report of the presiding justice of the superior court to the supreme judicial court for the Commonwealth of Massachusetts.

6 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Superior Court for the Transaction of Criminal Business, November Term, A. D. 1891.

COMMONWEALTH
v.
RUSSELL HUNTLEY and LUTHER H. HUNTLEY.

Report.

This was a complaint brought in the municipal court of the city of Boston against the defendants for exposing for sale oleomargarine contrary to the provisions of chap. 58, Acts of Mass. for 1891, as alleged in the complaint which is hereto annexed and made a part of these proceedings.

At the trial in the superior court in the November term the following facts were agreed upon.

That on the 18th day of September, A. D. 1891, the defendants had in their possession in said Boston, and within the judicial district of said municipal court, a box containing a number of pound prints of oleomargarine, as set forth in the complaint, that looked like and were in imitation of yellow butter, as alleged in the complaint. The defendants, on the said day, exposed the said oleomar-

garine for sale, and did so with the intent to sell the same at retail, and not in the original package. The said oleomargarine was not in the original unbroken package in which it was brought into this State, and the box or tub in which it was so exposed for sale was an open box or tub that contained only part of the oleomargarine that was in the said box or tub at the time it was brought into this State. The defendants, in exposing this oleomargarine, as aforesaid, complied with all the rules and regulations of existing law relative to marking and distinguishing the said box or tub and
6½ the said oleomargarine; that oleomargarine is a wholesome article of food, and in no way affecting the health injuriously.

The defendants requested me to rule as follows:

1. That the complaint does not set forth any offence for which the defendants can be held.

2. That sect. 1, chap. 58, Acts of Mass., 1891, has been repealed by a later act, chap. 412, Acts of Mass., 1891.

3. That this said chap. 412 allowed the defendants to expose the said oleomargarine for sale.

4. That a license to sell oleomargarine, issued to the defendants by the United States in accordance with the act of Congress, approved Aug. 2, 1886, authorized the defendants to expose the said oleomargarine for sale.

5. That this said act of Congress entitled "An act defining butter, also imposing a tax upon and regulating the manufacture, sale, and importation and exportation of oleomargarine," does not give this State the right to prohibit the manufacture and sale of said oleomargarine.

6. That this act is unconstitutional because it is in conflict with Mass. constitution, art. 1, sect. 10.

7. That this act is not a proper use of the police powers of the State.

8. That this act is repugnant to itself and to the Mass. constitution, for the reason that the subject-matter of the act is not embraced in the title of the act.

9. That this act is unconstitutional because it is in conflict with art. 1, sect. 8, par. 3 of the U. S. Constitution.

10. That this act is unconstitutional because it is in conflict with art. 4, sect. 2, par. 1 of the U. S. Constitution.

11. That this act is unconstitutional because it is in conflict with the 14th amendment of the U. S. Constitution.

12. That this act is unconstitutional because it is in conflict with the 5th amendment of the U. S. Constitution.

13. That the court is without jurisdiction because the act has been repealed and is unconstitutional.

These requests of the defendants were overruled by me, and the defendants duly excepted.

I further ruled against the objection and under the exceptions of the defendants that the evidence would authorize the jury to convict the defendants upon said agreed facts.

The jury returned a verdict of guilty.

Now, after verdict, at the request of the defendants, I report the case to the supreme judicial court for its determination. If there was no error in the aforesaid rulings and directions, then said verdict is to stand; if said rulings or directions or either of them were erroneous, then said verdict is to be set aside.

EDGAR J. SHERMAN,
Justice of Superior Court.

Nov. 9, 1881.

7 Said complainant was thence continued from term to term to the May term, A. D. 1892, when a rescript was received from said supreme judicial court of said Commonwealth.

The following is the rescript received from the supreme judicial court of the Commonwealth of Massachusetts:

8 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, May 7, 1892.

In the case of Commonwealth *vs.* Huntley, pending in the superior court for the county of Suffolk—

Ordered that the clerk of said court in said county make the following entry under said case in the docket of said court, viz:

Exceptions; verdict of guilty to stand.

C. A.

By the court,

HENRY A. CLAPP, *Clerk.*

May 7, 1892.

8½ *Brief Statement of the Grounds and Reasons of the Decision.*

The St. of 1891, c. 58, is not repealed by St. 1891, c. 412, & is not in violation of the Constitution of the United States.

9 Afterward, during the said May term, the said Russell and Luther were set at the bar of said superior court to receive sentence.

It was therefore considered by the said superior court that the said Russell and Luther, for their offence as set forth in said complaint, each pay a fine of one hundred dollars, and that they stand committed until said sentence be complied with.

9½ All and singular which premises we have held good, by the tenor of these presents to be exemplified.

In testimony whereof we have caused the seal of our superior court to be hereto affixed.

Seal of the Superior Court.

Witness Albert Mason, Esquire, chief justice of our said superior court, at Boston, this twenty-fourth day of May, in the year of our Lord one thousand eight hundred and ninety-two.

JOHN P. MANNING, *Clerk.*

10 The following is the application for the writ of error and the assignment of errors:

11 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

COMMONWEALTH OF MASSACHUSETTS
vs.
RUSSELL HUNTLEY and LUTHER H. HUNTLEY.

To the Honorable Albert Mason, chief justice of the superior court of the Commonwealth of Massachusetts:

Your petitioners, the defendants in the above-entitled cause of action, complain that errors of law appear in the record of the above-entitled cause of action, and respectfully petition for a writ of error to the Supreme Court of the United States, and that you will issue a citation to the Commonwealth of Massachusetts upon said writ of error, and herewith file their assignments of errors as follows:

First. The court erred in such judgment because it did not take judicial notice of the fact that oleomargarine is a particular, well-known, definite, and established article of commerce in the marts of the world.

Second. The court erred in such judgment because it did not take judicial notice of the fact that oleomargarine has always resembled yellow butter, and that from its nature it cannot be manufactured without resembling yellow butter.

Third. The court erred in such judgment because it did not take judicial notice of the fact that oleomargarine, when made in compliance with the act of Congress approved August 2nd, 1886,
12 and entitled "An act defining butter; also imposing a tax upon and regulating the manufacture, sale, and importation and exportation of oleomargarine," must resemble yellow butter.

Fourth. The court erred in such judgment because it did not take judicial notice of the fact that the act under which the petitioners were fined is an act designed to prohibit the manufacture and all sales in the Commonwealth of Massachusetts of the article of commerce known as oleomargarine.

Fifth. The court erred in such judgment against the petitioners upon the facts stated in the record because it did not take judicial notice of the fact that Congress, by the act of August second, 1886, entitled "An act defining butter; also imposing a tax upon and regulating the manufacture, sale, and importation and exportation of oleomargarine," has made ample provision to protect the public against fraud.

Sixth. The court erred in such judgment against the petitioners upon the facts stated in the record because it has not noticed the fact that oleomargarine is a valuable, wholesome, palatable, and nutritious article of human food, and is in no way deleterious to the public health or welfare.

Seventh. The court erred in such judgment against the petitioners upon the facts stated in the record because it has not noticed that in respect to the article sold the importers and petitioners had complied with all the requirements of the act of Congress regulat-
13 ing the sale of oleomargarine, and it was marked and distinguished by all the marks, words, and stamps required of oleomargarine by the laws of this Commonwealth, and that there was no fraud.

Eighth. The court erred in such judgment against the petitioners upon the facts stated in the record in construing the act of Congress entitled "An act defining butter; also imposing a tax upon and regulating the manufacture, sale, and importation and exportation of oleomargarine," and approved August 2nd, 1886.

Ninth. The court erred in such judgment against the petitioners upon the facts stated in the record in construing the fourteenth amendment of the Constitution of the United States.

Tenth. The court erred in such judgment against the petitioners upon the facts stated in the record in construing section 8, article 1, of the Constitution of the United States.

Eleventh. The court erred in such judgment against the petitioners upon the facts stated in the record in construing the fifth amendment of the Constitution of the United States.

Twelfth. The court erred in such judgment against the petitioners upon the facts stated in the record in construing chapter 58 and chapter 412, Acts of Massachusetts for 1891.

Thirteenth. The court erred in such judgment against the petitioners upon the facts stated in the record in deciding that the court had jurisdiction in the matter.

14 Wherefore the petitioners pray that said judgment may be reversed.

RUSSELL HUNTLEY AND
LUTHER H. HUNTLEY,
By their attorneys, ROBERT M. MORSE,
(57 *Equitable Building, Boston, Mass.*).
WM. J. CAMPBELL,
(217 *La Salle St., Chicago, Ill.*).
ALBERT H. VEEDER,
(240 *La Salle St., Chicago, Ill.*).
HENRY M. AYARS,
(505 *Sears Building, Boston, Mass.*).

15 & 16 The foregoing application was allowed by the chief justice of the said superior court, and the said Russell and Luther were ordered by said superior court to furnish a bond, with sureties, in the sum of one thousand dollars, to prosecute said writ in *in* said supreme court, and said Russell and Luther furnished said bond as required.

17 & 18 The following are the opinions of the supreme judicial court for the Commonwealth.

(Omitted in printing per stipulation.)

19 The following is the original citation and acknowledgment of service:

20 The United States of America to the Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the sixth day of June next, pursuant to a writ of error filed in the clerk's office of the superior court of the Commonwealth of Massachusetts, holden for the transaction of criminal business within & for the county of Suffolk, wherein Russell Huntley & Luther H. Huntley are plaintiffs in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Albert Mason, chief justice of the superior court of the Commonwealth of Massachusetts, this nineteenth day of May, in the year of our Lord one thousand eight hundred and ninety-two.

[Seal of the Superior Court.]

ALBERT MASON.

BOSTON, 18 *May*, 1892.

I accept due service of the foregoing citation.

A. E. PILLSBURY,
Att'y Gen'l of Mass.

21 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

I, John P. Manning, clerk of the superior court, do hereby certify that the foregoing are true copies of—

I. Writ of error.
II. Return thereon.
III. The record in the case of Commonwealth *vs.* Russell Huntley and Luther H. Huntley.
IV. Application for writ of error and assignment of errors.
V. The opinion of the full court; all annexed to and transmitted with the record.
VI. And of all the proceedings in said case, with all things concerning the same.
VII. The original citation and the acknowledgment of service thereon.

In testimony whereof I hereunto set my hand and affix the seal of said superior court, at Boston aforesaid, this twenty-fourth day of May, in the year of our Lord one thousand eight hundred and ninety-two.

Seal of the Superior Court.

JOHN P. MANNING, *Clerk.*

22 *Bond on Writ of Error.*

Know all men by these presents that we, Russell Huntley and Luther H. Huntley, both of Somerville, Middlesex county, and Commonwealth of Massachusetts, as principals, and S. Everett Hyde and James C. Melvin, both of Boston, Suffolk county, and said Commonwealth, as sureties, are held and firmly bound unto the Commonwealth of Massachusetts in the full and just sum of one thousand dollars, to be paid to the said Commonwealth of Massachusetts; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the nineteenth day of May, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas lately, at a hearing before the superior court of the Commonwealth of Massachusetts, holden for the transaction of criminal business at Boston, within and for the county of Suffolk, in a suit depending in said court between the Commonwealth of Massachusetts and Russell Huntley and Luther H. Huntley, judgment was rendered against the said Russell Huntley and Luther H. Huntley, and the said Russell Huntley and Luther H. Huntley having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Commonwealth of Massachusetts, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington on the sixth day of June next:

Now, the condition of the above obligation is such that if the said Russell Huntley and Luther H. Huntley shall prosecute their said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

RUSSELL HUNTLEY. [L. S.]
LUTHER H. HUNTLEY. [L. S.]
JAMES C. MELVIN. [L. S.]
S. EVERETT HYDE. [L. S.]

Signed, sealed, and delivered in presence of—
HENRY M. AYARS.

Approved:
ALBERT MASON,
Chief Justice of Superior Court.

A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond; which bond is on file in the office of the clerk of the superior court of the Commonwealth aforesaid within and for said county.

Attest: JOHN P. MANNING,
Clerk Superior Court Aforesaid.